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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,152	09/26/2000	Sean M. Whitsell	7000-008	4838
27820	7590	06/03/2005	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512			BEAULIEU, YONEL	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/670,152	WHITSELL, SEAN M.	
Examiner		Art Unit	
Yonel Beaulieu		3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 May 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 and 26-56 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 13-16 is/are allowed.
 6) Claim(s) 1,2,4,6,9-11,17-24,26-37,41 and 51 is/are rejected.
 7) Claim(s) 3,5,7,8,12,38-40,42-50 and 52-56 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/17/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's request for reconsideration filed 5/23/05 have been fully considered. The finality noted in the last communication has been vacated. However, a rejection follows:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6 - 11, 17 – 24, 26 – 37, 41, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Nimura et al. (US 6,125,323).

Regarding claims 1, 2, 4, 6 - 11, 17 – 24, 26 – 37, 41, and 51, Nimura et al. teaches determining if travel on a learned route by a user is likely (abstract; col. 1: 6 – 12 at least); requesting, through a mobile terminal (fig. 1), traffic information pertaining to the learned route (col. 17: 39 – 51 at least) and delivering the traffic information bia the mobile terminal to the user (col. 6: 8 – 22 at least); determining the location of the mobile terminal (using GPS technology; see fig. 1; col. 6: 3 – 7 at least); comparing the location with location information associated with the learned route based upon current time (col. 2: 23 – 28 at least); Nimura further uses cellular technology to query a traffic information database (remote ATIS; col. 6: 8 – 17 at least) and software for instructing the mobile (see figs. 9 – 31).

Nimura further teaches processing information pertaining to the learned route to determine if an undesirable condition is indicated and delivering an alternate route if the condition is indicated (col. 1: 52 – 58 and summary at least).

Allowable Subject Matter

Claims 3, 5, 7, 8, 12, 38 - 40, 42 – 50, and 52 – 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 – 16 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (703) 305-4072. The examiner can normally be reached on M-R, from 0900-1600.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3661

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Y. BEAULIEU
AU 3661
30 May 2005


YONEL BEAULIEU
PRIMARY EXAMINER